

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AB 118 AIR QUALITY GUIDELINES FOR THE AIR QUALITY IMPROVEMENT PROGRAM AND THE ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY PROGRAM

Public Hearing Date: September 25, 2008
Agenda Item No.: 08-8-7

I. GENERAL

Introduction and Background

In this rulemaking, the Air Resources Board (the Board or ARB) is adopting a new regulation to ensure that both the Air Quality Improvement Program (AQIP) and the Alternative and Renewable Fuel and Vehicle Technology Program complement, and do not interfere with, California's existing air quality programs and maintain or improve upon the emission benefits achieved through these programs. This regulation fulfills the requirements of Health and Safety Code section 44271(b) of the *California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007* (Assembly Bill (AB) 118, Chapter 750, Statutes of 2007, Health and Safety Code sections 44270-44274).

The rulemaking was initiated by a Notice of Public Hearing to consider the proposed regulations at the Board's September 25, 2008 hearing. The notice was released and made available to the public on August 8, 2008. The Staff Report: Initial Statement of Reasons for Proposed Rulemaking, entitled "Proposed AB 118 Air Quality Guidelines for the Air Quality Improvement Program and the Alternative and Renewable Fuel and Vehicle Technology Program" (ISOR), was made available for public review and comment beginning August 8, 2008. The ISOR, which is incorporated by reference herein, described the rationale for the proposal. The text of the proposed regulation, which would add new sections 2340, 2341, 2342, 2344 and 2345 in title 13, California Code of Regulations (CCR), was included as Appendix A, to the ISOR. These documents were also posted on the ARB internet site for the rulemaking at: <http://www.arb.ca.gov/regact/2008/aqipfuels08/aqipfuels08.htm> .

Description of Board Action

On September 25, 2008, the Board conducted a public hearing to consider ARB staff's proposed AB 118 Air Quality Guidelines. Written and oral comments were received on the proposed regulation from August 8, 2008 to September 25, 2008, and at the public hearing. Staff presented modifications based on the comments received. At the conclusion of the hearing, the Board adopted Resolution 08-40 approving the proposed regulation with modifications as offered in the staff presentation and in response to written and oral comments.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to incorporate the modifications into the proposed regulatory text and to make such modifications available for a supplemental comment period of at least 15 days. The text of the proposed modifications to the originally proposed regulations was made available for a supplemental 15-day comment period ending November 12, 2008, by issuance of a Notice of Public Availability of Modified Text (15-day notice or Notice). This Notice and the modified regulation were mailed on October 27, 2008, to all identified interested parties. The 15-day notice and attachment were also posted on October 27, 2008, on ARB's internet site for rulemaking.

The Executive Officer was then directed either to adopt the regulation with such additional modifications as may be appropriate in light of the comments received, or to present the regulation to the Board for further consideration if warranted in light of the comments. No additional modifications were proposed based on the six comments received during the Notice comment period. The comments received, along with staff response, are presented elsewhere in this document.

In accordance with section 11346.9(a)(1) of the Government Code, this Final Statement of Reasons (FSOR) updates the ISOR by identifying and explaining the modifications that were made to the original proposal as a result of public comment. The FSOR also summarizes the written and oral comments received during the 45-day comment period preceding the September 25, 2008 hearing; comments received at the public hearing on September 25, 2008; and comments received during the 15-day comment period. The FSOR includes ARB's responses to those comments.

Modifications to the Original Proposal

In the ISOR for Proposed Rulemaking, released August 8, 2008, staff proposed a 10-day public review period for the full fuel cycle supplemental evaluation (section 2343(b)(2)(B)2.c.). Staff also proposed that the public review period for the report on localized health impacts to be 10 days (section 2343(c)(6)(A)). Based on comments received, staff presented at the hearing, and the Board approved, increasing both review periods to 30 days. This additional time will

allow ARB to provide California Energy Commission (CEC) appropriate recommendations for project selection.

Also presented by staff and approved by the Board at the hearing was section 2343(b)(2)(B)2.d., which requires the CEC to consult with ARB when conducting any full fuel cycle supplemental evaluation. This consultation will allow ARB to provide information to CEC to assist in the supplemental evaluation.

The increased public review time and ARB consultation on full fuel cycle supplemental evaluations address concerns expressed by several stakeholders during meetings in the 45-day comment period and at the Board hearing.

Documents Incorporated by Reference

There are no documents incorporated by reference in title 13, sections 2340, 2341, 2342, 2343, 2344, or 2345.

Economic and Fiscal Impacts

The Board's Executive Officer has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code. The regulatory action will not affect federal funding.

Costs to the State associated with this regulation are tied to costs to the implementation of the AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program by the ARB and CEC, respectively, through 2015. Implementation of the regulation as part of the AQIP will require one ARB position per year through 2015. Implementation of the Air Quality Guidelines as part of the Alternative and Renewable Fuels and Vehicle Technology Program will require 0.5 CEC positions per year through 2015. The cost of these positions is approximately \$115,000 per position per year for the ARB and \$65,000 per position per year for the CEC. These positions are included in the fiscal year 2008-09 budget for implementation of the AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program. This regulation does not require any additional budgeted funds or positions.

ARB staff has evaluated the potential economic impacts on representative private persons and businesses. Participation in both the AQIP and the Alternative and Renewable Fuels and Vehicle Technology Program is purely voluntary for all participants including the public, businesses, and local agencies. Any school district participation would also be entirely voluntary. There are no mandated economic or fiscal impacts by this action to the public, business, local agencies, or school districts.

The Board's Executive Officer has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business with the State of California.

The Board's Executive Officer has also determined, pursuant to title 1, CCR, section 4, that this regulatory action is unlikely to affect small businesses. In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements in the regulations and incorporated documents that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Consideration of Alternatives

The Board's Executive Officer has determined that there would be no alternative more effective than the action taken by the Board.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSE

45-day Comment Submittals

The following organizations and individuals provided written comments during the 45-day comment period:

<u>Abbreviation</u>	<u>Commenter</u>
COOK	Deborah Cook
WSPA	Joe Sparano Western States Petroleum Association (WSPA)
ENVIRO	Bonnie Gen-Holmes, American Lung Association; V. John White, Center for Energy Efficiency and Renewable Technologies (CEERT); Tim Carmichael, Coalition for Clean Air; Patricia Monahan, Union of Concerned Scientists; Diane Bailey, Natural Resources Defense Council (NRDC)

Ms. Cook's letter requested regulations on vehicles crossing the border between Mexico and the U.S. This comment did not pertain to the regulatory language available for comment. As such, the comment is not addressed in this FSOR.

WSPA expressed concern over linking the proposed air quality analysis as proposed in the ISOR to the Low Carbon Fuel Standards (LCFS) and using the existing Greenhouse gases, Regulated emissions and Energy use in Transportation model (CA-GREET). The letter from the environmentalists expressed concern regarding the language regarding off-sets (too vague) and suggested that ARB should be required to approve any supplemental analysis that would approve an increase in criteria pollutants and toxic emissions. They also suggested that toxic air contaminant off-sets be located in closer proximity to projects than within the air basin and that a more specific public health analysis be required.

Oral Testimony Received at the September 25, 2008 Board hearing:

The following organizations and individuals presented oral testimony at the hearing on September 25, 2008. Organizations identified with an asterisk (*) also submitted written comments during the 45-day comment period.

<u>Abbreviation</u>	<u>Commenter</u>
BAAQMD	Anthony Fournier Bay Area Air Quality Management District
CEC	Aleecia Macias California Energy Commission
ENVIRO*	Bonnie Holmes-Gen American Lung Association of California
SCAQMD	Barry R. Wallerstein; Henry Hogo South Coast Air Quality Management District
WSPA*	Michael Wang Western States Petroleum Association
BLACKBURN	Joe Blackburn

CEC supported the staff recommendations. Mr. Blackburn expressed support for biodiesel fuel. BAAQMD and SCAQMD stated that the regulation should not limit the pollutant trade-offs to just criteria pollutants and toxic air contaminants. Greenhouse gases (GHGs) should be included in the pollutant trade-off and subsequent supplemental evaluation allowed in the regulation. American Lung Association testimony supported the program as a whole, but expressed concern regarding allowed off-sets. WSPA recommended delay in using the CA-GREET model until it is updated for use with the LCFS.

15-day Comment Period

Written comments in response to the 15-day notice were received from the following individuals and organizations:

<u>Abbreviation</u>	<u>Commenter</u>
ALT FUELS	Jon Van Bogart, Western Regional Manager CleanFuel USA Jeanne Benedetti Fulcrum BioEnergy, Inc. Karri Hammerstrom Cilion, Inc.
SCAQMD	Barry R. Wallerstein, Executive Officer South Coast Air Quality Management District
VERDINER	David Verdiner

Mr. Van Bogart suggested adoption of a “bridging” strategy that would initially focus more on currently available and near term fuels and technologies and increasing focus in later years on 2050 technologies. He also submitted written material supporting the air quality benefits of propane fuels. Fulcrum BioEnergy supported the proposed regulations, including staff’s modifications. Cilion expressed concern regarding the staff’s proposed fuel cycle analyses and encouraged the ARB and CEC to evaluate proposals carefully. SCAQMD expressed concern that the two-step evaluation process may eliminate projects that reduce criteria pollutants because there may not be a greenhouse gas emissions benefit. Mr. Verdiner’s comments were directed to electric vehicle regulations, which did not pertain to the regulatory language available for comment. As such, the comment is not addressed in this FSOR.

Comment Summary and Agency Responses

Set forth below is a summary of each comment made regarding the specific regulatory action proposed, with an explanation of how the proposed action was changed in response to comments, or the reasons for making no change.

A. Pollutant trade offs

1. Comment: The regulation should not limit pollutant trade offs to just criteria pollutants and toxic air contaminants. Greenhouse gases (GHG’s) should be included in the pollutant trade off and the subsequent

supplemental evaluation allowed in the regulation. (BAAQMD, SCAQMD-written and oral comments)

Agency Response: No change was made in response to this comment. The statutory focus of the Alternative and Renewable Fuel and Vehicle Technology Program is to help California attain its climate change goals. Allowing GHG increases for this program would be in direct conflict with statutory intent of the program. While the statutory focus of the AQIP is to achieve reductions in criteria pollutants and toxic air contaminants, not GHG reductions, it is consistent with the overall direction of AB 118 on climate change and with ARB's policy on harmonizing climate change programs to ensure that this program does not fund GHG increases. In addition, other incentive programs exist that do not have the same statutory intent of AB 118. When looking at the portfolio of incentive funds available, it makes sense to direct projects that could potentially increase GHG emissions into those incentive programs.

2. Comment: Regulatory language allowing off-sets is vague. The ARB should be required to approve any supplemental analysis that would approve an increase in criteria pollutants and toxic emissions. (Lung Association, Coalition for Clean Air, CEERT, NRDC, Union of Concerned Scientists, written and oral comments).

Agency Response: The Board approved staff's proposed modifications to the regulation that will require the CEC to consult with ARB when conducting any full fuel cycle supplemental evaluation (section 2343(b)(2)(B)2.d.). The approved modifications also increases public review times from 10 calendar days to 30 calendar days (section 2343(b)(2)(B)2.c. and 2343(c)(6)(A)). This modification will allow ARB to provide CEC with pertinent information and assistance in conducting the evaluation.

3. Comment: Toxic air contaminant off-sets should be located in closer proximity to projects than within the same air basin and there should be a specific public health analysis that talks about impact analysis. (Lung Association, Coalition for Clean Air, CEERT, NRDC, Union of Concerned Scientists, written and oral comments).

Agency Response: The regulation requires the emissions evaluation be conducted on a full fuel cycle basis, such that the evaluation includes all point source and upstream emissions within California without regards to the air basin where the emissions are generated. Fully mitigating any toxic air contaminant increases in the same air basin that the project occurs ensures that, at a minimum, the program does not increase emissions. This methodology has the potential to provide additional emission benefits for the project air basin since some of the off-set

emission increases may have occurred on other air basins. In addition, the regulation requires all off-sets be included in a supplemental evaluation, including potential health impacts, available to the public and presented in a publicly noticed meeting. (section 2343(b)(2)(B)2.)

4. Comment: Concern was expressed regarding the staff's proposed fuel cycle analyses and encouraged the ARB and CEC to evaluate proposals carefully. (SCAQMD)

Agency Response: The Board approved staff- proposed modifications to the regulation that will require the CEC to consult with ARB when conducting any full fuel cycle supplemental evaluation (section 2343(b)(2)(B)2.d.), and has increased public review times from 10 calendar days to 30 calendar days (section 2343(b)(2)(B)2.c. and 2343(c)(6)(A)). These modifications will allow ARB to assist CEC in their evaluations and provide additional time for public input.

B. Delay Adoption of Regulation

1. Comment: ARB should delay adoption of this regulation until the LCFS has been adopted. (WSPA, written and oral comments)

Agency Response: The evaluation process proposed incorporates the same analytical tools which will be used to demonstrate compliance with ARB's LCFS, which is the CA-GREET model. The regulation incorporates by reference the methodology and fuel evaluation processes being finalized as part of the LCFS regulation. Delaying the regulation is unnecessary and would impact CEC's schedule for implementing projects.

C. Support for Alternative Fuels

1. Comment: Support for the use of biodiesel in the ARB and CEC programs. (Joe Blackburn)

Agency Response: The AQIP and the Alternative and Renewable Fuel and Vehicle Technology Program do not preclude the use of biodiesel. The CA-GREET allows equal evaluation of fuel options.

2. Comment: ARB should adopt a "bridging" strategy that would initially focus more on currently available and near term fuels and technologies and increasing focus in later years on 2050 technologies. (Jon Van Bogart)

Agency Response: One of the broad project types included in the Alternative and Renewable Fuel and Vehicle Technology Program administered by the CEC is "Alternative and renewable fuel projects to

develop and improve alternative and renewable low-carbon fuels, including feedstock projects.” This will provide the opportunity to develop future technologies while other portions of the CEC program and AQIP will provide opportunities for near term technologies.

3. Comment: ARB and CEC need to be amenable to introducing new pathways in the CA-GREET model to address new, different biofuel feedstocks as they are developed. (Cilion, Inc.)

Agency Response: The regulation requires projects to be evaluated in accordance with the LCFS regulation which is incorporated by reference. The draft LCFS regulation includes a methodology for generating new pathways using the CA-GREET model. The LCFS regulation will be proposed at the April 2009 Board Hearing.